



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
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Wetlands Scientists
State of New Hampshire

October 11, 2001

Dear Professional Wetlands Scientist:

The attached guidelines are intended as a starting point toward the clarification of some issues involved with the delineation of altered wetlands and surface waters. It is our hope that you will review this draft, and provide your comments to the Wetlands Bureau by November 15, 2001.

As you know, the 1987 Wetlands Delineation manual was designed as a tool for Section 404 of the Clean Water Act (CWA). Using it as a tool for New Hampshire's RSA 482-A is fairly straightforward except where the manual provides editorial comment relative to CWA exemptions and its effective date. Much of our draft guidance is directly from the manual, but it also includes specific areas where the RSA 482-A requires a modified interpretation.

Finally, we want to emphasize that the March 21, 2001 letter from the Wetlands Bureau and the US Army Corps of Engineers to the Board of Certification of Natural Scientists addresses obvious errors in delineation, which stem from clear misapplications of Section F, and the 1987 Manual in general. The attached guidance and today's workshop address a much broader set of issues, some of which are very subtle. It is not the intention of the Bureau to take action against anyone who has made an honest mistake despite their exercise of due diligence.

We hope you enjoy today's workshop, and we look forward to your comments on the proposed guidelines.

Sincerely,

Kenneth N. Kettenring
Wetlands Bureau Administrator



October 11, 2001

Draft Policy for Delineation of Altered Wetlands and Surface Waters

This document is intended to provide guidance regarding delineation of altered wetland or surface water sites in a manner consistent with RSA 482-A.

1. When wetlands scientists complete delineations using the three-parameter approach outlined in the Corps of Engineers Wetlands Delineation Manual ("Manual"), wetland scientists must consider whether the area is "under normal circumstances." For example, in instances where the vegetation in a wetland has been inadvertently or purposely removed or altered as a result of recent natural events or human activities, alternate methods must be employed in making wetland determinations (See 1987 Manual, Part I, Paragraph 12). Note that an area may still be a jurisdictional wetland if it lacks soils, vegetation, or hydrology (or any combination) due to unauthorized activities.
2. For each site on which a wetland scientist performs a delineation, the scientist should review available site plans, surveys, US Geological Survey ("USGS") maps, soil surveys, National Wetland Inventory ("NWI") maps, and Department of Environmental Services ("DES") and town/city files to assist in identification of wetlands and surface waters and possible changes to historical boundaries. Note that a review of existing documents is always the first step in performing delineations under Part IV, Methods, Section B Preliminary Data Gathering and Synthesis of the Manual.
3. Where positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology cannot be found due to the effects of unauthorized human activities or natural events, Section F, Atypical Situations, of the Manual should be used. Data Forms, as approved by the US Army Corps of Engineers, New England District should be submitted with any wetland delineation for an altered site.
4. *"Unauthorized" as characterized in the Manual is intended for interpretation of ACOE jurisdiction and Clean Water Act jurisdiction. For New Hampshire wetlands delineations, the Manual should be read in the context of RSA 482-A (or predecessor law RSA 483-A). The State of New Hampshire wetlands jurisdiction is not affected by recent federal Supreme Court cases. Only exemptions to state law would be relevant.*
5. When determining whether wetland alterations are "unauthorized," wetland scientists need to consider the appropriate date of New Hampshire permitting jurisdiction. Permit jurisdiction in New Hampshire for tidal wetlands began June 22, 1967. For nontidal wetlands and surface waters jurisdiction began, July 2, 1969. In 1970 a list of saltwater wetland plant species were incorporated in predecessor statute RSA 483-A. Effective March 27, 1979, "marsh," "swamp" and "bog" were described by rule, which included a listing of typical plants.
6. Where natural events or unauthorized human alterations have altered wetland boundaries, the wetland scientist should make every effort to document the size of the altered wetland and

the approximate date of the alteration. On-site determinations must include soils investigation by augering and/or test pit excavation in suspected fill areas. Useful information on altered hydrology may be collected using monitoring wells or piezometers. The scientist should also review conditions in adjacent undisturbed areas at what would have been a comparable elevation to examine soils, plants and hydrology. Often, the minimum age of any dredged or filled area can be determined by analysis of existing vegetation. Additional off-site research such as a comprehensive review of local and state plans of the property or aerial photo interpretation is often necessary to accurately estimate the wetland boundary and document the date of the alteration.

7. DES expects that the level of effort and field sampling intensity used in delineation of complex altered wetlands will be comprehensive (i.e., follow methods contained in Section E), including submittal of data sheets to document the wetland determination. DES Staff are available to assist wetland scientists in designing sampling protocols or evaluating the results of field investigations for difficult sites.

8. Altered wetland boundaries should be labeled and plans should contain annotations to indicate the approximate size and date of each altered wetland. If necessary, plans can depict altered wetland boundaries using a line type or cross-hatching distinct from unaltered wetland boundaries. In some cases, an altered wetland boundary may be a wetland scientist's best estimate of the previous boundary. If so, this can be indicated by plan annotation.

9. Wetland scientists are reminded that the NHDES Wetlands Bureau also has jurisdiction in surface waters (perennial and intermittent streams, lakes and ponds), banks adjacent to surface waters (including marshes), sand dunes, the tidal buffer zone, and areas adjacent to prime wetlands. The criteria for determining jurisdictional surface waters are found in RSA 482-A, RSA 485, and the Administrative Rules Wt 100-700. Where field evidence or other information indicates that a stream has been diverted, filled, or otherwise altered, the wetland scientist must reflect such alterations on their plans.

10. The DES Wetlands Bureau does not require wetland scientists to report instances of suspected violations. The recognition and delineation of altered wetlands by wetlands scientists shall be completed to the best of their professional ability using the guidance of Section F of the US Army Corps of Engineers Wetlands Delineation Manual. However, the responsibility of such alteration lies with the landowner, either current or previous, under whose tenure such wetlands or surface waters may have been impacted. Acceptance of such a delineation by DES shall not preclude the DES from taking enforcement action against the landowner under RSA 482-A or RSA 485-A.